

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Wilson,

Plaintiff,

v.

Equifax Information Services, LLC et al,

Defendants.

Case No. 2:19-cv-00055-RFB-NJK

ORDER

I. INTRODUCTION

Before the Court is Defendant Experian Information Solutions, Inc.'s Motion to Dismiss. ECF No. 34.

II. PROCEDURAL BACKGROUND

Plaintiff filed the initial complaint in this matter on January 9, 2019, alleging violations of the Fair Credit Reporting Act ("FCRA") and the Nevada state law equivalent against Equifax Information Services, LLC, Chase Mortgage, FMC-Omaha, Experian Information Solutions, LLC, and Trans Union, LLC. ECF No. 1. Plaintiff filed a First Amended Complaint on March 18, 2019. ECF No. 26. Defendant Chase Mortgage was voluntarily dismissed on March 25, 2019, ECF No. 29, and Defendant FMC-Omaha was voluntarily dismissed on April 2, 2019, ECF No. 36.

The instant motion was filed on April 1, 2019. ECF No. 34. Plaintiff responded on April 15, 2019, ECF No. 39, and Defendant replied on April 22, 2019, ECF No. 48. The Court granted Plaintiff leave to file supplemental authority on March 9, 2020. ECF No. 71.

Discovery was stayed pending resolution of the instant motion on May 22, 2019. ECF No. 61.

1 Plaintiff voluntarily dismissed Trans Union, LLC on June 24, 2019, ECF No. 63, and
2 Equifax Information Services, LLC on July 8, 2019, ECF No. 66.

3 **III. FACTUAL BACKGROUND**

4 The following facts are as alleged in the complaint.

5 On or about April 25, 2016, Plaintiff filed for Chapter 7 Bankruptcy, and Plaintiff's debts
6 were discharged through the Bankruptcy on August 3, 2016.

7 The Consumer Data Industry Association ("CDIA") publishes the Metro 2 ("Metro 2")
8 reporting standards to assist furnishers with their compliance requirements under the FCRA. The
9 Metro 2 format guidelines provide specific instruction for properly reporting a secured debt for
10 which a consumer completes the required payments through a Chapter 7 bankruptcy, but continues
11 making payments on the account because it is still open following the bankruptcy, which requires
12 that the reporting remove any suppression codes associated with bankruptcy reporting "so that
13 ongoing payments made by the consumer can be reported." Defendant is a credit reporting agency
14 as defined by FCRA. Plaintiff asserts Defendant reported inaccurate information that did not
15 comply with the Metro 2 format, in violation of its duty to follow reasonable procedures to assure
16 maximum possible accuracy under 15 U.S.C. § 1681e(b) when preparing a consumer report. This
17 information was misleading as well as inaccurate.

18 Specifically, Plaintiff alleges Defendant and Synchrony bank reported inaccurate
19 information in an Experian credit report dated May 30, 2017 as to two of Plaintiff's accounts
20 ("Synchrony Tire Tradeline" and "Synchrony Walmart Tradeline"). Plaintiff alleges that multiple
21 "charge-offs" were reported on these accounts during 2015 and 2016 when the charge-off for each
22 account should only have been reported once. A dispute letter was mailed on August 15, 2017
23 asking that the inaccurate information be removed, corrected, or deleted. Plaintiff alleges on
24 information and belief that Defendant notified Synchrony Bank of the dispute but in the alternative
25 alleges it did not.

26 On or about August 31, 2017, Plaintiff received a "reinvestigation" report from Experian
27 pursuant to its duties under 15 U.S.C. §§ 1681i and NRS 598C.160. Experian indicated that it had
28 received and responded to the dispute letter but explained to Plaintiff that she would have to "refer

1 to [her] credit report for update.” Plaintiff alleges Defendant failed to conduct a reasonable
2 reinvestigation as required because such an investigation would have revealed both of the accounts
3 at issue could only be charged off once, not twice. Defendant’s reporting did not change to reflect
4 this.

5 The dispute letter also included a “statement of dispute” pursuant to 15 U.S.C. § 1681i(b).
6 Specifically, Plaintiff requested that in the event Defendant failed to make the requested
7 corrections identified in the dispute letter, Defendant include a statement on Plaintiff’s credit report
8 indicating the account is disputed. Defendant failed to do so.

9 Additionally, Plaintiff alleges Defendant inaccurately recorded Plaintiff’s bankruptcy
10 inclusion dates in its report and reinvestigation in violation of § 1681g(a)(1).

11 On or about June 6, 2017, Plaintiff obtained a consumer file from Experian which
12 “suppressed” positive data being furnished from Chase on Partial Account No. 1809 (“Chase
13 Tradeline”), thereby depriving Plaintiff of positive credit data that would have provided Plaintiff
14 a true “fresh start” after filing for bankruptcy. Experian alternatively failed to report timely
15 mortgage payments on the Property reported by Chase. This failure caused the second report to
16 include materially misleading omissions, which created misperceptions about Plaintiff’s timely
17 monthly payments to Chase.

18 Specifically, Chase furnished positive credit data to Experian stating that Plaintiff’s
19 account was “current” with all ongoing monthly payment obligations from September 5, 2015 to
20 September 19, 2017 and likely beyond, but Defendant failed to include this positive data in its
21 second report and instead listed the account as included in the bankruptcy. This report was
22 inaccurate and misleading.

23 A dispute letter was sent on October 6, 2017, pursuant to 15 U.S.C. §1681i(a)(2) and NRS
24 598C.160 notifying Defendant of the inaccurate information. Plaintiff included proof of the
25 suppressed positive data, which was provided directly by Chase to Plaintiff in response to
26 Plaintiff’s request for information pursuant to 12 C.F.R. § 1024.36 (the “RFI Response”) to Chase.
27 On or about October 24, 2017, Plaintiff received notification from Experian through its
28 reinvestigation that Experian received notice of Plaintiff’s dispute pursuant to 15 U.S.C. §

1 1681i(a)(6) and NRS 598C.160. However, Defendant and Chase failed to correct the reported data
 2 to include the Suppressed Positive Data in Chase's updated tradeline. Instead, Chase and
 3 Defendant rereported the same data as before. Accordingly, Defendant failed to conduct a
 4 reasonable investigation and reinvestigation as required by 15 U.S.C. §§ 1681i(a), 1681s-2(b), and
 5 NRS 598C.160, and wrongly continued suppressing complete and accurate information in
 6 connection with the second report.

7 As in Plaintiff's first dispute letter, Plaintiff's second dispute letter included a "statement
 8 of dispute" requesting that in the event Defendant failed to make the requested corrections
 9 identified, Defendant include a statement on Plaintiff's credit report indicating the account is
 10 disputed. Again, Defendant failed to do so.

11 Plaintiff alleges that as a result of Defendant's "willful" conduct, Plaintiff has been harmed,
 12 including damage to her creditworthiness. Plaintiff alleges a reasonable procedures claim pursuant
 13 to 15 U.S.C. § 1681e(b), a reasonable reinvestigation claim pursuant to § 1681i, and a file
 14 disclosure claim pursuant to § 1681g(a)(1). Plaintiff also brings a claim under NRS 598C.160
 15 which is nearly identical to the FCRA.

16 17 18 **IV. LEGAL STANDARD**

19 An initial pleading must contain "a short and plain statement of the claim showing that the
 20 pleader is entitled to relief." Fed. R. Civ. P. 8(a). The court may dismiss a complaint for "failure
 21 to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In ruling on a motion
 22 to dismiss, "[a]ll well-pleaded allegations of material fact in the complaint are accepted as true and
 23 are construed in the light most favorable to the non-moving party." Faulkner v. ADT Sec. Services,
 24 Inc., 706 F.3d 1017, 1019 (9th Cir. 2013) (citations omitted).

25 To survive a motion to dismiss, a complaint need not contain "detailed factual allegations,"
 26 but it must do more than assert "labels and conclusions" or "a formulaic recitation of the elements
 27 of a cause of action...." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp.
 28 v. Twombly, 550 U.S. 544, 555 (2007)). In other words, a claim will not be dismissed if it contains

1 “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face,”
 2 meaning that the court can reasonably infer “that the defendant is liable for the misconduct
 3 alleged.” Id. at 678 (internal quotation and citation omitted). The Ninth Circuit, in elaborating on
 4 the pleading standard described in Twombly and Iqbal, has held that for a complaint to survive
 5 dismissal, the plaintiff must allege non-conclusory facts that, together with reasonable inferences
 6 from those facts, are “plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v. U.S.
 7 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

8 9 **V. DISCUSSION**

10 Defendant argues Plaintiff has failed to plead inaccuracy as to all of her claims and has
 11 otherwise failed to state a claim for relief under the FRCRA, as well as willfulness or negligence.

12 **A. The Fair Credit Reporting Act**

13 “Congress enacted the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681–1681x, in
 14 1970 ‘to ensure fair and accurate credit reporting, promote efficiency in the banking system, and
 15 protect consumer privacy.’ ” Gorman v. Wolpoff & Abramson, LLP, 584 F.3d 1147, 1153 (9th
 16 Cir. 2009) (quoting Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47 (2007)). “As an important means
 17 to this end, the Act sought to make ‘consumer reporting agencies exercise their grave
 18 responsibilities [in assembling and evaluating consumers’ credit, and disseminating information
 19 about consumers’ credit] with fairness, impartiality, and a respect for the consumer’s right to
 20 privacy.’ ” Id. (alteration in original) (quoting 15 U.S.C. § 1681(a)(4)).

21 **a. 15 U.S.C. § 1681e(b)**

22 Section 1681e(b) of the FCRA requires the consumer reporting agency to “follow
 23 reasonable procedures to assure the maximum possible accuracy of the information concerning the
 24 individual about whom the report relates.” 15 USC § 1681e(b). Liability under 1681e(b) “is
 25 predicated on the reasonableness of the credit reporting agency’s procedures in obtaining credit
 26 information.” Guimond v. Trans Union Credit Info. Co., 45 F.3d 1329, 1333 (9th Cir. 1995). To
 27 bring a 1681e claim, the “consumer must present evidence tending to show that a [CRA] prepared
 28

1 a report containing inaccurate information.” Id. The consumer must also “first make a prima facie
2 showing of inaccurate reporting by the CRA.” Shaw v. Experian Info. Sols., Inc., 891 F.3d 749,
3 756 (9th Cir. 2018) (internal citations omitted). Inaccurate for the purposes of FCRA means
4 information that is either “patently incorrect” or is “misleading in such a way and to such an extent
5 that it can be expected to adversely affect credit decisions.” Id. Once the consumer has made a
6 prima facie showing of inaccuracy, he or she must next show that the consumer reporting agency
7 failed to follow reasonable procedures to assure the maximum possible accuracy of the
8 information. 15 U.S.C. § 1681e(b).

9 Defendant argues that Plaintiff has failed to state a reasonable procedures claim because
10 she has failed to allege inaccurate reporting. Id. at 5-6. With regard to Plaintiff’s claim that
11 Defendant reported multiple charge-offs on two Synchrony accounts, Defendant asserts there is
12 no case law to support Plaintiff’s assertion that multiple reports of a charge-off constitutes an
13 inaccuracy, and further, that Plaintiff cannot show how listing the charge-offs in successive months
14 leads to adverse crediting decisions. Id. at 6-7. As to Plaintiff’s claim that Defendant inaccurately
15 reported her bankruptcy inclusion dates, Defendant asserts Plaintiff cannot show this adversely
16 affected her credit decisions as required to prove inaccuracy, because she cannot show that the
17 adverse decision would be attributed to the discrepancies in inclusion dates as opposed to the
18 bankruptcy itself. Id. at 7-8. Further, Plaintiff cannot show that bankruptcy inclusion dates affect
19 credit decisions or that Defendant includes them on consumer credit reports sent to third parties.
20 Id. at 8. Defendant also argues Plaintiff’s positive data claim fails because there is no obligation
21 under the FCRA to report payment history for a discharged account on which the consumer
22 continues to make payments to avoid seizure of the underlying property, and FCRA does not
23 require credit reporting agencies to decide which debts are included in a bankruptcy file. Id. at 9.

24 Defendant additionally argues that Plaintiff has failed to plead a § 1681e(b) claim because
25 that provision only applies to consumer reports, and the “reports” at issue here are actually
26 consumer disclosures, because Plaintiff fails to allege they were provided to third parties. ECF No.
27 34 at 10-12. Defendant also argues these claims fail because they are “disguised” § 1681i
28 reinvestigation claims and should be analyzed under that provision. Id. at 13-14. Further,

1 Defendant argues this claim fails because Plaintiff failed to allege that Defendant failed to follow
2 its reasonable procedures. Id. at 14.

3 Plaintiff counters that the information did appear on a consumer report because
4 reinvestigation reports must be sent in the form of a consumer report. ECF No. 39 at 9, 12-13.
5 Plaintiff asserts that § 1681a(d) broadly defines “consumer report,” and the statute does not limit
6 that definition to reports sent to a third parties. Id. at 12-16. Further, Plaintiff contends that
7 Defendant has testified in other cases that information on a disclosure sent in a reinvestigation
8 might be sent to a third party as a consumer report upon consumer request and may therefore
9 include bankruptcy inclusion language. Id. at 9-11. Plaintiff also counters that she adequately
10 alleged a reasonable procedures violation because she pled detailed allegations as to how
11 Experian’s failure to reinvestigate her dispute constituted a Section 1681e(b) failure. Id. at 17.

12 As an initial matter, the Court recently noted in its decision in Calvillo v. Experian Info.
13 Sols., Inc., a case also involving Experian which considered facts similar to those at issue here,
14 that “Experian incorrectly implies that a consumer must show that the information would be
15 transmitted to a third party in order to make out a section 1681e(b) claim.” No.
16 219CV00277RFBNJK, 2020 WL 1549574, at *3 (D. Nev. Apr. 1, 2020). “The Ninth Circuit has
17 explicitly held that proof of transmission to a third party is not a prerequisite for making a 1681e(b)
18 claim.” Id. (citing Guimond, 45 F.3d at 1333). The Court further disposed of Experian’s argument
19 that Plaintiff’s § 1681b claim was a “disguised” § 1681i claim, holding that “the Ninth Circuit has
20 never held that a reporting inaccuracy cannot support both a § 1681e(b) claim and a § 1681i claim.”
21 Id. That holding as well as many of the Court’s conclusions in Calvillo are dispositive as to the
22 instant motion, and the Court therefore incorporates its reasoning and conclusions.

23 The Court finds that Plaintiff has adequately pled a § 1681b claim. Plaintiff alleges
24 inaccuracies in the form of multiple charge-offs, the exclusion of positive data, and inaccurate
25 bankruptcy inclusion dates. Plaintiff alleges these inaccuracies are misleading in such a way and
26 to such an extent that they can be expected to adversely affect her creditworthiness because
27 payment history and the inclusion of a bankruptcy are factored into credit scoring models. These
28 allegations are sufficient to satisfy Plaintiff’s initial burden of alleging inaccuracy. See also

1 Calvillo, 219CV00277RFBNJK, 2020 WL 1549574, at *3 (D. Nev. Apr. 1, 2020) (citing Shaw,
 2 891 F.3d at 757) (“Incomplete information, even if accurate, may nevertheless be misleading.”).
 3 Plaintiff has also adequately pled that Defendant failed to follow reasonable procedures to assure
 4 the maximum possible accuracy by alleging that Defendant re-reported inaccurate information,
 5 and upon information and belief, failed to comply with its own internal policy regarding
 6 bankruptcy disputes.

7
 8 **A. 15 U.S.C. § 1681i and NRS 598C.160**

9 In relation to the duties of CRAs in the event a consumer disputes reported information as
 10 inaccurate, Section 1681i provides:

11
 12 [I]f the completeness or accuracy of any item of information contained in a
 13 consumer's file at a [CRA] is disputed by the consumer and the consumer notifies
 14 the [CRA] directly, or indirectly through a reseller, of such dispute, the [CRA] shall,
 15 free of charge, conduct a reasonable reinvestigation to determine whether the
 16 disputed information is inaccurate and record the current status of the disputed
 information, or delete the item from the file in accordance with [the FCRA], before
 the end of the 30-day period beginning on the date on which the agency receives
 the notice of the dispute from the consumer or reseller.

17 15 U.S.C. § 1681i(a)(1)(A). Thus, the CRA must conduct a reinvestigation of information provided
 18 by furnishers or creditors within thirty days of receiving notice of the consumer dispute. Id.

19 Additionally, Section 1681i mandates that the CRA provide notice of its decision on an
 20 investigation in one of two ways. First, Section 1681i provides:

21
 22 Upon making any determination in accordance with subparagraph (A) that a dispute
 23 is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of
 24 such determination not later than 5 business days after making such determination,
 by mail or, if authorized by the consumer for that purpose, by any other means
 available to the agency.

25
 26 15 U.S.C. § 1681i(a)(3)(B). Alternatively, Section 1681i provides:

27
 28 A consumer reporting agency shall provide written notice to a consumer of the

1 results of a reinvestigation under this subsection not later than 5 business days after
2 the completion of the reinvestigation, by mail or, if authorized by the consumer for
3 that purpose, by other means available to the agency.

4 15 U.S.C. § 1681i(a)(6)(A). A CRA therefore must provide either a notice that the dispute was
5 frivolous or irrelevant within five days of such a determination or a notice of the reinvestigation
6 results within five days of the conclusion of the reinvestigation.

7 “Although the FCRA's reinvestigation provision ... does not on its face require that an
8 actual inaccuracy exist for a plaintiff to state a claim, many courts, including [the Ninth Circuit
9 Court of Appeals], have imposed such a requirement.” Carvalho v. Equifax Info. Servs., LLC, 629
10 F.3d 876, 890 (9th Cir. 2010). Thus, a plaintiff “must make a prima facie showing of inaccurate
11 reporting” to file suit under Section 1681i. Id. (citing Dennis v. BEH-1, LLC, 520 F.3d 1066, 1069
12 (9th Cir. 2008)).

13 Section 1681i(b) states that if a reinvestigation does not resolve the dispute, “the consumer
14 may file a brief statement setting forth the nature of the dispute,” and § 1681i(c) requires that,
15 unless there are reasonable grounds to believe the statement of dispute is frivolous or irrelevant,
16 the CRA note in subsequent consumer reports that the information is disputed by the consumer,
17 and provide the consumer’s statement of dispute or “a clear and accurate codification or summary
18 thereof.”

19 Nevada Revised Statutes 598C.160 is nearly identical to the language in § 1681i and
20 imposes the same obligations regarding a statement of dispute and reinvestigation.

21 Defendant argues Plaintiff’s reinvestigation claims fail because she failed to allege an
22 inaccuracy and because she does not allege what was unreasonable about Defendant’s
23 reinvestigations or why it would be unreasonable for Defendant to rely on information provided
24 by furnishers to conduct its reinvestigation. ECF No. 34 at 14-16. Defendant also argues Plaintiff
25 has failed to plead a prima facie case for a § 1681i(c) violation because she did not allege that she
26 provided a statement of dispute after she received reinvestigation results as required, or that a
27 creditor accessed her credit report after the reinvestigation. ECF No. 34 at 16-17.

28 Plaintiff counters that she adequately alleged a prima facie § 1681i claim and that “because

1 the FCRA provides for money damages in lieu of actual damages in case of willful violations,
 2 [she] need not prove damages and causation to maintain a Section 1681i cause of action.” ECF
 3 No. 39 at 17.

4 The Court has already held *supra* that Plaintiff has adequately pled inaccuracy. The Court
 5 further finds that Plaintiff has adequately pled a § 1681i claim by pleading in the alternative that
 6 Defendant failed to notify Synchrony of Plaintiff’s dispute regarding the multiple charge-offs, by
 7 failing to correct inaccurate information as a result of reinvestigations regarding the suppression
 8 of positive payment history data and the multiple charge offs, upon information and belief failed
 9 to contain Plaintiff’s statement of disputes in subsequent consumer reports, and failing to review
 10 all relevant information provided by Plaintiff.

11 **B. 15 U.S.C. § 1681g and NRS 598C.130**

12 Section 1681g requires in part that “every consumer reporting agency shall, upon request
 13 ... clearly and accurately disclose to the consumer ... all information in the consumer's file at the
 14 time of the request...” 15 U.S.C. § 1681g(a)(1). A “consumer's file includes ‘all information on
 15 the consumer that is recorded and retained by a [consumer reporting agency] that might be
 16 furnished, or has been furnished, in a consumer report on that customer.” *Shaw*, 891 F.3d at 759
 17 (internal citations omitted). When considering whether a party has violated 1681g, the operative
 18 consideration is whether “the disclosure is understandable to the average consumer,” and whether
 19 the information provided to the consumer was in a form that was both “clear and accurate.” *Id.*
 20 Consumers request disclosures pursuant to section 1681g in order to compare the information in
 21 the credit file with their own personal information. *Id.* at 760 (citing *Gillespie v. Equifax Info.*
 22 *Servs., LLC*, 484 F.3d 938, 941 (7th Cir. 2007)) (“The disclosure must be made in a manner
 23 sufficient to allow the consumer to compare the disclosed information from the credit file against
 24 the consumer's personal information in order to allow the consumer to determine the accuracy of
 25 the information set forth in her credit file.”).

26 Defendant argues Plaintiff’s § 1681g claim fails as to allegedly inaccurate bankruptcy
 27 inclusion dates because she cannot allege this information was part of her file provided to third
 28 parties or that she was confused by Defendant’s reporting. ECF No. 34 at 18-19. Further, as to

1 Plaintiff's claim that Defendant failed to report positive payment information, this reporting was
2 not inaccurate and even if it were, Plaintiff had the ability to dispute it and did so, and therefore
3 does not have standing to assert her suppression claim because she has not suffered a cognizable
4 injury. Id. at 19-20.

5 Plaintiff counters that the appropriate inquiry is not whether Plaintiff was subjectively
6 confused but whether an average consumer would be confused by Defendant's reporting, as she
7 has alleged. ECF No. 39 at 18.

8 The Court finds that Plaintiff has adequately pled a § 1681g claim. Plaintiff has alleged
9 that Defendant failed to disclose all information in her consumer file by failing to include the
10 positive payment data and that the inaccurate bankruptcy "inclusion" date on the Chase Tradeline
11 had the tendency to confuse an ordinary consumer like Plaintiff, and created the impression that
12 these tradelines had been "included" in bankruptcy on dates after the actual petition date.
13 Regarding Plaintiff's confusion as to the inclusion dates, the Court has previously held that, "[t]he
14 relevant consideration is not whether the consumer was subjectively misled or confused by the
15 information contained in the file, but whether the information contained in the file is objectively
16 inaccurate." Leoni v. Experian Info. Sols. Inc., No. 217CV01408RFBVCF, 2019 WL 4866118, at
17 *4 (D. Nev. Sept. 26, 2019). Because the Court has already concluded that Plaintiff has alleged
18 inaccuracy, both as to the bankruptcy inclusion dates and the suppressed positive data, Plaintiff
19 has necessarily adequately pled a § 1681g claim.

20 21 **C. Willfulness or Negligence**

22 The FCRA provides for actual damages, punitive damages, and attorney's fees for willful
23 violations of its statutory requirements. 15 U.S.C. § 1681n(a). If a plaintiff establishes a negligent
24 violation of the statute, the FCRA provides for actual damages and attorney's fees. 15 U.S.C. §
25 1681o(a). "The term 'actual damages' has been interpreted to include recovery for emotional
26 distress and humiliation.... [N]o case has held that a denial of credit is a prerequisite to recovery
27 under the FCRA." Guimond, 45 F.3d at 1333 (citations omitted). "A plaintiff who alleges a 'bare
28 procedural violation' of the FCRA, 'divorced from any concrete harm,' fails to satisfy Article III's

1 injury-in-fact requirement.” Syed v. M-I, LLC, 853 F.3d 492, 499 (9th Cir. 2017) (quoting Spokeo,
2 Inc. v. Robins, 136 S. Ct. 1540, 1549 (2016)). The question of whether a consumer reporting
3 agency's failure to reinvestigate was negligent is typically one for the jury, unless the court finds,
4 accepting as true all facts the nonmovant asserts, that no rational jury could find that the CRA was
5 not negligent. Dennis v. BEH-1, LLC, 520 F.3d 1066, 1070 (9th Cir. 2008) (finding “remand
6 would be pointless” where the record showed that Experian overlooked a document that was easily
7 accessible to the public).

8 To show willfulness and be granted statutory damages under the FCRA, a consumer must
9 show that a defendant knowingly or recklessly violated the FCRA. Shaw, 891 F.3d, at 760. A court
10 may find that a defendant has behaved recklessly when the defendant's “action both is ‘a violation
11 under a reasonable reading of the statute's terms’ and ‘shows that the company ran a risk of
12 violating the law substantially greater than the risk associated with a reading that was merely
13 careless.’” Id. (internal citations omitted). The court may find willfulness as a matter of law where
14 the defendant “violates an unambiguous statutory requirement” and “that fact alone [is] sufficient
15 to conclude that [the defendant's] violation is reckless, and therefore willful.” Syed, 853 F.3d at
16 505 n.7 (examining a violation of Section 1681b(b)(2)(A)). “The FCRA does not impose strict
17 liability, however—an agency can escape liability if it establishes that an inaccurate [credit] report
18 was generated despite the agency's following reasonable procedures. The reasonableness of the
19 procedures and whether the agency followed them will be jury questions in the overwhelming
20 majority of cases.” Guimond, 45 F.3d at 1333 (citation omitted).

21 Defendant argues Plaintiff's allegations that Defendant's conduct was “willful” and
22 negligent are conclusory and Plaintiff has not alleged cognizable damages. ECF No. 34 at 20-24.
23 Plaintiff counters she has adequately pled damages by pleading that Defendant's failure to properly
24 reinvestigate her dispute damaged her creditworthiness and caused emotional distress, lost time,
25 and transportation costs. ECF No. 39 at 19-20. Plaintiff further asserts that because Defendant
26 “knows” what the law requires regarding information disclosed in a consumer report, Defendant's
27 alleged failure to disclose the required information or to do so in a way that is not misleading
28 indicates this failure is willful. Id. at 20. Plaintiff also adds that she has alleged a concrete injury

1 because § 1681g “serves the dual purpose of furthering accuracy and protecting consumer privacy,
2 and the Ninth Circuit has already determined that a consumer’s Article III standing for Section
3 1681e(b) purposes has been met by analogy to a consumer’s reputational harms” Id. at 24.
4 Regarding her § 1681i claim, she has adequately alleged injury because she detailed how the
5 alleged inaccuracies correlated to specific Experian credit scores, and credit reports she attaches
6 to the instant motion indicate third parties accessed her credit report. Id. at 24-25.

7 The Court agrees with Defendant that Plaintiff’s allegations as to willfulness are
8 conclusory and therefore that Plaintiff has failed to adequately plead willfulness. Therefore, the
9 Court dismisses any requests for punitive damages without prejudice. Plaintiff will be permitted
10 to seek discovery on this issue and move to amend for inclusion of punitive damages. The Court
11 also finds that Plaintiff may have actual damages which she is entitled to prove as the case
12 proceeds. The Court will grant Plaintiff leave to amend to add allegations sufficient to establish
13 willfulness.

14
15 **VI. CONCLUSION**

16 **IT IS THEREFORE ORDERED** that Defendant’s Motion to Dismiss (ECF No. 34) is
17 DENIED in PART and GRANTED in PART. The Court dismisses Plaintiff’s claim for punitive
18 damages without prejudice and grants Plaintiff leave to amend. The motion is denied as to all
19 remaining claims.

20 **IT IS FURTHER ORDERED** that the stay of discovery in this case is lifted. The parties
21 shall submit a discovery schedule to the Court within fourteen (14) days of this order.

22
23 DATED May 27, 2020.

24
25 
26 **RICHARD F. BOULWARE, II**
27 **UNITED STATES DISTRICT JUDGE**
28